

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OSCAR AGUIRRE CISNEROS,

Defendant-Appellant.

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UNPUBLISHED  
February 26, 2008

No. 274029  
Kent Circuit Court  
LC No. 05-012058-FH

Before: Talbot, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant appeals as of right from his conviction of possession with intent to distribute 5 to 45 kilograms of marijuana, MCL 333.7401(2)(d)(ii). He was sentenced as a second habitual offender, MCL 333.7413(2), to a prison term of 3 years, 6 months to 14 years. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the trial court erred when it allowed a police detective to testify that defendant's co-conspirators pleaded guilty to the same offense with which defendant was charged. Because defendant did not object to the testimony, the issue is unpreserved. MRE 103(a)(1). In a criminal case, unpreserved error is reviewed to determine if a defendant has demonstrated plain error affecting a substantial right. *People v Taylor*, 252 Mich App 519, 523; 652 NW2d 526 (2002). Reversal is warranted only if the error resulted in the conviction of an innocent defendant or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.*

Generally, the conviction of another person involved in a criminal enterprise is not admissible at a defendant's separate trial. *People v Kincade*, 162 Mich App 80, 84; 412 NW2d 252 (1987). Therefore, the detective's testimony regarding the co-conspirators' guilty pleas was not admissible. However, defendant did not demonstrate that the error affected his substantial rights. Defendant's defense was that, although he lived in the apartment with the co-conspirators, and possibly picked up a box containing marijuana, there was no evidence that he was involved with the marijuana and his mere presence in the apartment did not prove possession. Defense counsel argued, in his closing argument, that the other three men pleaded guilty and took responsibility for trafficking in marijuana. In contrast, defendant did not plead guilty because he was not responsible for the drugs. Because the co-conspirators' guilty pleas

supported defendant's defense rather than being used as substantive evidence of defendant's guilt, the error did not prejudice defendant and was not plain error affecting substantial rights.

Defendant next argues that he was entitled to credit for time served while awaiting trial, although he was on parole at the time he committed the offense, because there is no evidence that he was held on a parole detainer and because bond was set. As defendant recognizes, those with parole detainees are not entitled to credit for time served on their new sentences. *People v Seiders*, 262 Mich App 702, 705; 686 NW2d 821 (2004). However, here the lower court record indicates that defendant was held on a parole detainer. A pre-bond report, signed by defendant, states that a parole detainer was in place. In addition, at the end of the preliminary hearing, defendant's attorney stated that there was no question on bond because defendant had a parole hold.

Furthermore, defendant's failure to raise this issue before the lower court severely prejudices the prosecution, which was not given the opportunity to present evidence that a parole detainer was placed on defendant. Defendant did not object to the presentence information report, which recommended denying credit for time served due to defendant's parole status, and did not raise this issue in his motion for resentencing. He, therefore, cannot now complain about a lack of record regarding a parole detainer.

Affirmed.

/s/ Michael J. Talbot  
/s/ Mark J. Cavanagh  
/s/ Brian K. Zahra